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Supreme Court, U.S.
FILED

97 1053 DEC 23 1997

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No. _____

In The
Supreme Court of the United States
October Term, 1997

Marc Perkel, pro se, Petitioner,
-vs-
Supreme Court of Missouri, et al., Respondents

On Petition for a Common Law Writ of Mandamus and/or Prohibition to the Supreme Court of Missouri

PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION

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39 pp

QUESTIONS PRESENTED

- The underlying case is forever suspended due to a judicial stalemate between the trial court and the Supreme Court of Missouri. Who has the duty to resolve this stalemate so as to end the stay of the trial court and allow the case to proceed?

- Can a lawyer who is a defendant in an action represent his codefendant?

- Are state courts bound to follow their own rules? Can the United States Supreme Court order a state to obey it's own rules of court?

- If a judge decides a question of law should be certified, is it not the judge's responsibility to take the question to the higher court?

LIST OF PARTIES

Petitioner

- **Marc Perkel** - Plaintiff in the underlying fraud case that is caught in a judicial stalemate and is being denied his right to due process of law. Mr. Perkel raised the question of defendants representing other defendants, which is still pending waiting on a ruling for a higher court.

Respondents

- **The Supreme Court of Missouri** – Missouri's highest court. Judge Syler suspended the trial pending a certification of a question of law by a higher court. The Supreme Court of Missouri refused to certify the question and thus created a judicial stalemate.

- **The Honorable Judge William L. Syler,** Trial Judge – Judge Syler was appointed to hear this case by the Supreme Court of Missouri after the local judges recused themselves due to conflicts of interest. Judge Syler is the judge who made the ruling in question which permitted defendants to represent other defendants. Judge Syler ordered the trial stayed pending a ruling from the Missouri Court of Appeals.

- **William A. Wear Jr.,** Mo. Bar 23292 – Attorney for Ms. Stringfellow in the underlying divorce case. Marc Perkel sued Mr. Wear, Mr. Sharp, and Ms. Stringfellow for fraud upon the court, fabrication of false evidence, and fraudulent conspiracy. Although he is a defendant, Mr. Wear appeared in the fraud suit to represent Ms. Stringfellow as her attorney.

- **James R. Sharp,** Mo. Bar 35498 – Attorney for Ms. Stringfellow and Defendant. Mr. Sharp is a partner of Mr. Wear in the law firm of Wear and Sharp.

- **Donald R. Duncan,** Mo. Bar 18542 – Attorney for Wear and Sharp and Defendant. Mr. Duncan appeared as counsel for Mr. Wear and Mr. Sharp. Although an attorney can and often does represent parties who have committed fraud, an attorney is not allowed to break the rules or commit frauds himself in the representation of a client. On that basis the Plaintiff, Marc Perkel amended his pleading to include Mr. Duncan as a defendant. Mr. Duncan represents Mr. Wear and Mr. Sharp, their law firm, his own law firm, and is pro se in the underlying case.

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PETITION FOR A WRIT OF MANDAMUS AND/OR PROHIBITION

Petitioner Marc Perkel does hereby petition this Honorable Court for the issuance of a Writ of Mandamus to compel the Respondents to resolve the judicial stalemate and to compel the Respondents to follow the Rules of Court, abide by the Constitution, and allow the Petitioner his due process of law.

OPINIONS BELOW

All relevant orders are printed in Appendix A. These orders include:

- Order of Judge Syler on July 14th 1997 to certify the question of defendants representing defendants and recessing all proceedings.
- Order of the Missouri Court of Appeals on July 30th 1997 denying writ of prohibition.
- Order of the Supreme Court of Missouri on September 30th 1997 denying Petitioner's writ and Judge Syler's order to certify the question.
- Judge Syler's second order on December 3rd 1997 to stay pending certification of the question.

JURISDICTION

On July 14th 1997 the trial judge suspended the case pending a ruling on a question of law from the Missouri Court of Appeals. The Missouri Court of Appeals refused to make a ruling. The Petitioner then took the question to the Supreme Court of Missouri pointing out to them that the trial judge suspended the case until the higher court rules. The Supreme Court of Missouri on September 30th 1997 refused to make a ruling. Missouri does not rehear extraordinary writs. On December 3rd 1997 Judge Syler reiterated his stay with a second order prohibiting discovery and motions.

The Fundamental Rights of the Petitioner

I have, as a citizen of the United States, a fundamental and absolute right to due process of law pursuant to the 5th Amendment and 14th Amendment. This court has a duty to the Constitution to uphold my rights and to make sure that inferior courts uphold my rights. See Ward v. Maryland 79 US 419, 430, (1870). Jurisdiction of this court is based on Article III of the Constitution.

Only this Court can Act

Because the lower court suspended until the higher court rules, and the higher courts refused to rule, a judicial stalemate exists. In order to resolve the judicial stalemate, a writ of mandamus is necessary from a court that has the authority to order the Supreme Court of Missouri to act. This court is the only court that has the authority to compel the Supreme Court of Missouri to act. Therefore, adequate relief cannot be obtained by any court other than this one. Therefore this court has jurisdiction.

Mandamus is Proper Remedy

In the case of UNITED STATES v. UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF TENNESSEE ET AL. 1954.C06.4, the Sixth Circuit Court of Appeals ruled:

> The United States, through an Assistant Attorney General, has moved this appellate court to issue a mandatory order directing the United States District Court for the Eastern District of Tennessee, Northern Division, to vacate and expunge its order of August 10, 1953, refusing to accept the transfer of this criminal case. An order to show cause why this motion of the United States should not be granted was issued by this court and the same has been duly answered by the district judge to

whom it was addressed. He adheres to his original position upon reasoned grounds which brings about a "judicial stalemate"; wherefore, it becomes the duty of this court to resolve the conflict of opinion among trial judges in the same state in this procedural matter which is of practical importance now and perhaps in future cases. Mandamus or a proceeding in the nature of mandamus is the appropriate procedure by which to decide the issue presented. See United States v. United States District Court, 334 U.S. 258, 263, 68 S. Ct. 1035, 92 L. Ed. 1351; Ex parte United States, 287 U.S. 241, 247, 53 S. Ct. 129, 77 L. Ed. 283; McClellan v. Carland, 217 U.S. 268, 280, 30 S. Ct. 501, 54 L. Ed. 762; State of Tennessee, by Wolfenbarger, etc., v. Taylor, 6 Cir., 169 F.2d 626, 637, which rather comprehensively reviews the subject of mandamus.

Constitutional Duty to Act

Because the case is forever suspended in a judicial stalemate, and that this court is the court of last resort, this court has a duty to the Constitution to act. This court does not have the option to do nothing. The question before this court isn't if it will act, but what the action should be.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution – 5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in

jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution – 14th Amendment

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Missouri Rule 1.6

"(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (2) to establish a claim of defense on behalf of the lawyer in a controversy between the lawyer and the client to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyers representation of the client."

The comment section goes on to say:

"If a lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and the client acting together."

Missouri Rule 1.7

Conflict charged by an Opposing Party - "Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. ... Where the conflict is such as clearly to call in question the fair and efficient administration of justice, opposing counsel may properly raise the question."

"Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyers other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client."

Missouri Rule 3.7

"A lawyer shall not act as an advocate at trial in which the lawyer is likely to be a necessary witness..."

Missouri Rules of Court - Canon 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in the Judge's Official Activities

A. A Judge should respect and comply with the law, and the judge's conduct at all times should promote public confidence in the integrity and impartiality of the judiciary.

STATEMENT OF THE CASE

On January 15, 1997 I filed a law suit in Greene County Missouri Circuit Court naming as defendants Vicki Stringfellow, his ex-wife, William A. Wear, her divorce lawyer, James R. Sharp, her other divorce lawyer, and the law firm of Wear and Sharp. In the suit the Petitioner alleged that the defendants had committed fraud upon the court, fabricated evidence with the participation of counsel, fraudulent conspiracy, and a number of other questionable acts that lawyers and clients should not do. The suit alleges the defendants used fraud in order to obtain a divorce judgement against me in excess of 100% of my assets. The suit alleged that the lawyers committed and participated in several of the improper acts, thus making them legitimate defendants to this action.

Although Stringfellow, Wear, and Sharp were all defendants, Wear and Sharp nonetheless filed an appearance as attorneys for Defendant Stringfellow. Defendants Wear and Sharp were represented by Donald Duncan who was hired by "The Bar Plan" which is Wear and Sharp's insurance company. I then filed a motion to disqualify counsel for conflict of interest and violation of the Missouri Rules of Court.

On June 2, 1997 I amended my suit to include Wear and Sharp's lawyer, Mr. Duncan, as a defendant alleging that Mr. Duncan was breaking the Rules of Professional conduct and assisting his client to break the Rules of Professional Conduct. Issues now before the court include Tampering with Physical Evidence for the purpose of obstruction of justice. Since then Mr. Duncan has made an appearance representing himself and his law firm.

The Supreme Court of Missouri appointed the Honorable Judge Syler to hear the case. I filed motions to ask the court to disqualify

counsel on the basis that it was improper for defendants to represent other defendants.

A hearing was held on July 14, 1997. At the hearing Judge Syler took up Plaintiff's motion to disqualify Wear and Sharp from representing Ms. Stringfellow and denied his motion. Whereupon I moved for an immediate appeal to certify the question of defendants representing defendants. The Court granted Plaintiff's request for certification of the question and entered an order recessing all proceedings pending certification to the Court of Appeals. The Court ruled:

> "The Court takes up Motion #2, Motion to Disqualify Defendant Vicki Stringfellow's Attorney's for Conflict of Interest. After examination of Deft Stringfellow in regard to her representation, the Court denies the motion. Whereupon, Petr requests certification of the ruling. After consideration of requests for certification, the Court recesses all proceedings pending Petr's certification to the Court of Appeals."

I then took my question to the Missouri Court of Appeals as directed by the order of the Court to ask that the Court of Appeals certify the question of defendants representing defendants. On July 30th 1997 the Court of Appeals refused to rule, stating that the Missouri Court of Appeals doesn't have the authority to review interlocutory decisions of the trial court.

I then took the question of defendants representing defendants to the Supreme Court of Missouri, pointing out to them that the trial judge wanted the high court to rule on the issue. On September 30th 1997 the Supreme Court of Missouri denied the motion and refused to rule.

On November 26, 1997 Judge Syler, in response to various motions filed, wrote a letter to all parties indicating that he will not take up pending matters until the United States Supreme Court

rules on the issue of defendants representing other defendants. However, due to Thanksgiving, the letter arrived several days later.

On November 28th 1997 Plaintiff noticed all defendants that he would take their deposition on December 19th. Defendant Stringfellow filed for a protective order.

On December 3, 1997 Judge Syler protected defendants from all discovery by issuing an order stating:

> "All discovery or other motions pending are hereby stayed pending further appellate action by Petitioner Perkel including, but not limited to, any Writ of Certiorari from the U.S. Supreme Court."

At no time since the question was presented for certification to the high court has the trial judge nor any of the Respondents made any argument supporting the contention that one defendant should be allowed to represent another.

REASON FOR GRANTING THE WRIT

The Judicial Stalemate

Since the trial court suspended until the question is certified, the trial court would be forever suspended if this court fails to rule. This court therefore can not ignore this situation. This court has to take some kind of action. With the trial court forever suspended, Petitioner Marc Perkel would be denied his right to due process under the 14th Amendment of the United States Constitution.

A court must act when it has a duty to act. In the 1908 case of ex parte Young states:

> Under these circumstances, the language of Chief Justice Marshall in Cohens v. Virginia, 6 Wheat, 264, 404, is most apposite. In that case he said: "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty."

Because this situation creates a judicial stalemate, this court has a duty under the Constitution to fix the stalemate so that the lower

court is not forever suspended waiting on a higher court, which refuses to act. This court therefore must "do something" to fix it. For this court to do nothing would be and act of treason to the Constitution per ex parte Young.

In the case of UNITED STATES v. UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF TENNESSEE ET AL. 1954.C06.4, the Sixth Circuit Court of Appeals held that:

> " ...which brings about a "judicial stalemate"; wherefore, it becomes the duty of this court to resolve the conflict of opinion among trial judges in the same state in this procedural matter which is of practical importance now and perhaps in future cases. Mandamus or a proceeding in the nature of mandamus is the appropriate procedure by which to decide the issue presented."

Remedies available to this court

This court is under a duty to the Constitution to resolve the judicial stalemate. The stalemate can be resolved through mandamus, or this court, having acquired jurisdiction through a judicial stalemate, could resolve the stalemate by addressing the underlying issues that created the stalemate. Thus this court has subject matter jurisdiction over all the underlying issues which led to, or could have led to, the stalemate. It would therefore be appropriate for this court to make findings and issue opinions and orders so as to preclude the possibility of the problem from reoccurring.

There are several things this court might do. It could order the Supreme Court of Missouri to rule on the issue of defendants representing other defendants and certify the question per the order of Judge Syler. Or this court could decide the question of defendants representing other defendants. This court could order

that Judge Syler proceed with the trial even with the improper representation. Doing nothing is not an option.

This court could also make findings and rulings to prevent future judicial stalemates. This court could also issue opinions as to the effectiveness of judicial safeguards to ensure the due process rights of litigants, especially pro se litigants, are upheld.

I contend that the events that led to this action reflect serious flaws in the justice system that need to be addressed and corrected by this court.

Should the Supreme Court of Missouri Rule?

This court must do something to resolve the judicial stalemate. One solution is for this court to order the Supreme Court of Missouri to rule on the question. This solution would protect the rights of individual states to rule themselves as contemplated in the 11th Amendment. Some court has a duty to rule on the question. The Missouri Supreme is a logical choice.

Should this court rule on the question of law?

The other logical choice is that this court rule on the issue of defendants representing other defendants. This court could conclude that this issue is sufficiently universal that all states should have the same rule. Therefore it would be appropriate for this court to rule on the issue of defendants representing other defendants.

My opinion is that this court should rule on the issue. I contend that the issue of defendants representing their coconspirators is a no-brainer and this court should make the obvious decision to prohibit defendants from representing defendants.

The question of defendants representing defendants appears to be a novel issue. I can find no cases anywhere where one defendant has ever attempted to represent another defendant. As far as I can tell, this will be the first case in history where a court allowed defendants to represent defendants. These lawyers are going where no lawyer has gone before. This case presents an issue of such general interest and importance as to warrant review by this nations highest court.

Interpreting the Supreme Court of Missouri's non-ruling

The question remains as to what the non-ruling of the Supreme Court of Missouri means. Although the Respondents should speak for themselves on this issue, I think it is likely that Judge Syler will incorrectly interpret the non-ruling as a decision not to prohibit him from allowing defendants from representing other defendants. With this interpretation Judge Syler would proceed with the trial allowing the improper representation to continue.

I, however, have a different interpretation of the high court's non-ruling. I believe that if Judge Syler's position had any merit that the high court would have ruled to support his decision. The fact that the high court refused to support his decision indicates that the high court wishes to save the judge the embarrassment of having his decision overruled in favor of a pro se litigant. I believe that Judge Syler failed to realize that when the high court failed to endorse his ruling, that the high court was telling him his ruling was wrong.

I contend that my interpretation of the high court decision must be the correct interpretation under the following theory:

If we were to assume that my interpretation is wrong, then the high court would, in failing to prohibit defendants from representing defendants, be ruling that it's allowable for a

defendant to represent another defendant. I contend that would not be possible. I contend that it isn't possible to become a Justice of the Supreme Court of Missouri without understanding basic legal theory. I contend there is no way possible for even one, let alone all 7 justices to make a ruling that strange. Therefore, my interpretation of the non-ruling must be the correct one.

Defendants representing Defendants

The very idea of a defendant representing another defendant seems to defy common sense. If a lawyer and a sailor robbed a bank together, would the lawyer be allowed to represent the sailor at trial? Not hardly. This case is the same except that the issue is fraud rather than bank robbery. A defendant representing other defendants seems to be the very definition of conflict of interest.

Missouri rules gives opposing parties the right to raise the issue of conflict of interest. Rule 1.7 states:

> **Conflict charged by an Opposing Party** - "Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. ... Where the conflict is such as clearly to call in question the fair and efficient administration of justice, opposing counsel may properly raise the question."

Missouri also has Rule 3.7 that prohibits a witness from being an advocate at trial. Rule 3.7 states, "A lawyer shall not act as an advocate at trial in which the lawyer is likely to be a necessary witness ..." A defendant, by definition, is a witness. Thus Rule 3.7 prohibits defendants from being an advocate at trial.

Proper representation also depends on loyalty to a client. Rule 1.7 states:

"Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyers other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client."

In this case where one defendant is representing another defendant, the client is denied the opportunity to settle the case separately from her co-defendant lawyer, violating Rule 1.7. Rule 1.7 goes on to say, "The lawyers own interests should not be permitted to have and adverse effect on the representation of a client." STRICKLAND, SUPERINTENDENT v. WASHINGTON 466 U.S. at 687 makes this concept clear:

"The Sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."

What this means is that if the court were to allow one defendant to represent another defendant, the client will be able to make a claim that the decision should be overturned based on the Strickland doctrine. Thus, the trial would have no meaning. In the case of MICHAEL NUNN, v. STATE OF MISSOURI, 1989.MO.936 it was decided that:

"Counsel was caught between the obligation to do his best for movant and the need to justify his own conduct as legal and ethical. An accused is entitled to representation which is uncluttered by counsel's efforts to vindicate his own conduct. A conflict of interest resulting in ineffective assistance of counsel may arise from an interest adverse to the accused or an interest simply personal to the attorney. Maddox v. State, 715 S.W.2d

10, 11 (Mo. App. 1986); Douglas v. State, 630 S.W.2d 162, 164 (Mo. App. 1982)."

"The only issue which should have been before the jury was defendant's conduct, not that of his attorney. Counsel's actions which injected his credibility as an issue during movant's trial undoubtedly adversely affected his client's interests. Counsel's prior conduct was completely irrelevant to movant's case and could only detract from his defense. That the jury unintentionally imputed the alleged improprieties of defense counsel to his client is a very real possibility. Counsel could have avoided this possibility by adhering to the ethical prohibitions."

It is clear to me that a jury would be confused by the multiple roles of the lawyers, witness, and co-defendants. When Mr. Duncan speaks to the court, how will we know when he's speaking pro se and when he's representing a client and which of the four clients he's speaking for. Will he bring five hats?

The case of State of Missouri ex rel., v. The Honorable Frank Conley. This case makes the whole issue of the dual role of lawyer/witness very clear. It explains in detail what Rule 3.7 really means. In this case a lawyer was to testify against his client. The client understood the conflict of interest and waived his rights to accept his lawyer. He was questioned on the stand extensively to make sure he knew and fully appreciated the choice he was making. He claimed he did. It was also pointed out that the defendant had waited in jail for a long time and that he was broke and that changing counsel would be a hardship on him. The questioning went as follows:

Q. It is your desire to waive the conflict of interest issue, is it not?

A. Yes, sir, it is.

Q. That is, it is your desire having been advised of the potential problems, it is your desire to ask this Court not to disqualify your retained counsel and to permit you to waive the conflict of interest problem and have Mr. Almond and Ms. Brady continue as your retained counsel of choice in this capital murder case; is that correct?

A. Yes, sir, that's correct.

Q. And in making that decision you have been advised by me that there is a potential problem and a potential, if not real conflict of interest between your lawyer's duty to you and his potential interest in protecting himself and in his confusion perhaps of roles as an attorney as well as the potential appearance of your counsel a witness in the case in which he both represents you and will appear to testify himself; isn't that correct?

A. Yes, sir, that's correct.

Q. And knowing of the potential problems, you are still willing to waive that conflict of interest?

A. Yes, I am.

Q. I have advised you that in the event the Court sees fit to accept your waiver that you may be precluded from later contending in a post-trial motion that you were entitled to a fair trial without cluttered representation which may be complicated because of your trial attorney's appearing both as a witness and as an advocate for you; isn't that correct?

A. Yes, sir, that's correct.

Nonetheless the court denied him the choice to continue with his counsel based on Rule 3.7. The court reached the following conclusion:

> "The reasons underlying this rule are set forth in Ethical Consideration 5-9 of Missouri's Code of Professional Responsibility. First, a lawyer who serves as both trial counsel and witness is open to impeachment on the basis of an apparent interest in the outcome of the trial and is thus rendered less effective as a witness. Second, a lawyer who assumes both of these roles in a single case makes it more difficult for opposing counsel to conduct effective cross-examination and creates an awkward scenario in which one advocate must challenge the credibility of his legal adversary. Third, the lawyer who assumes the role of a witness must argue his own credibility, which may serve to weaken his credibility and effectiveness as an advocate. Finally, the two roles are said to be simply inconsistent. These reasons have greatest purpose when the witness and advocate are one and the same."

Missouri case law clearly demonstrates that the dual roles as witness and advocate are incompatible. In my case Mr. Wear, Mr. Sharp, and Mr. Duncan have triple roles as witness, advocate, and defendant. What does the law say about this triple role? The law says nothing. I couldn't find a single case in any state or federal court where a lawyer has even attempted this pattern of representation. It appears that this is the first case where a defendant has ever tried to represent another defendant.

Besides the legal arguments, if we had a trial where defendants represented other defendants, we would have a real circus. If a defendant is a lawyer for another defendant, it puts the client in the awkward position of having to testify against her attorney. It also puts the attorney in the awkward position of having to testify against his client. It creates a conflict of interest where the attorney

might be tempted act to protect himself at the expense of his client/codefendant.

In a jury trial the jurors would have the burden of separating the multiple roles of the attorneys as to when the attorney is speaking as a defendant as opposed to when the attorney is speaking for the client. Because the attorney is a defendant and must defend his own actions, his ability to act as an advocate is compromised. The client is entitled to representation which is uncluttered by counsel's efforts to vindicate his own conduct. His client would have an argument for an automatic appeal based on ineffective counsel.

There is also the issue of the rules regarding confidentiality of information between the client and the lawyer. Missouri Rule 1.6(b)(2) states as follows with respect to disclosures by a lawyer about his clients:

> "(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary: (2) to establish a claim of defense on behalf of the lawyer in a controversy between the lawyer and the client to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyers representation of the client."

The comment section goes on to say:

> "If a lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for

example, a person claiming to have been defrauded by the lawyer and the client acting together."

In the underlying case, the pleading specifically alleges that the Plaintiff was defrauded by the lawyer and the client acting together. Thus, a client who is represented by a codefendant would effectively lose all claims to lawyer/client confidentiality that would not be lost if counsel, who was not a defendant, represented the client. Or conversely, the lawyer might improperly use the confidentiality rule as a shield to prevent the Plaintiff from discovering facts that would otherwise be discoverable. The rules of confidentiality were never intended to become a tool to mask a fraudulent conspiracy.

It even raises issue of billing for services. Will the lawyer be able to separate the work he's doing on behalf of the client from the work he's doing to prepare his own defense? Surely the client shouldn't have to pay for the defense of the lawyer.

A lawyer representing a codefendant creates a temptation for the lawyer to shift blame to the client in order to exonerate himself. How is it possible for an advocate to fairly represent someone who has such a strong personal interest in the outcome of the case? In the underlying case, the lawyers are accused of criminal conduct including Tampering with a Witness and Tampering with Physical evidence. How is it possible for a jury to make a fair determination of the facts when faced with lawyers who have to loyally advocate for their client while trying to save their own hide? A trial conducted under these circumstances can not be relied on to having produced a just result.

As a Plaintiff, when a client is represented by a codefendant, I am denied the opportunity to settle the case separately with individual defendants. This representation denies the client and the plaintiff opportunities for settlement that would otherwise be possible if the client were properly represented.

I contend that there's a reason this pattern of representation has never been attempted. The reason being that it is so obviously improper that no lawyer in the history of the United States has given it any serious consideration until these lawyers decided to go where no lawyer has ever gone before.

Interestingly, the pattern of representation in this case is only possible because the Plaintiff is a pro se litigant. If the Plaintiff were to hire counsel to represent him, his counsel would be subject to Missouri Rule 4.2 that prohibits lawyers from communicating with parties represented by counsel. My lawyer would not be allowed to communicate with Mr. Sharp as a lawyer for Ms. Stringfellow because Mr. Sharp is himself a defendant who is represented by Mr. Duncan. Only because the Plaintiff is pro se does this pattern of representation even come close to working.

The strongest argument against defendants representing other defendants is that it is so obviously wrong that it causes both average citizens and lawyers to giggle when they hear it. It doesn't take a mathematician to know that 1 + 1 does not equal 3, and it doesn't take a lawyer or a legal argument to prove that when a lawyer and a client are sued for conspiring to commit fraud, that the lawyer shouldn't represent the client in the fraud case. I can not believe that it is possible for a person to go to law school, become a lawyer, then become a judge, without knowing that defendants can't represent other defendants.

Can Missouri break it's own rules?

The trial court judge in the underlying case made a ruling that one defendant can represent another defendant at trial. This ruling was clearly a violation of Missouri's own rules of court. This ruling is so obviously wrong that one has to assume that the trial judge made a decision that he doesn't have to follow the Missouri Rules of Court.

The question was presented to the Supreme Court of Missouri and the high court refused to answer the question. If the high court fails to act, the presumption is that the acts contemplated by the lower court are not prohibited, which is logically the same as permitted. Thus by not ruling, the Supreme Court of Missouri has effectively ruled that it will permit the trial court to allow defendants to represent other defendants. The Supreme Court of Missouri is also effectively ruling to allow a trial judge to ignore and override the Missouri Rules of Court.

Canon 2 of the Missouri Rules of Court reads:

> A Judge Should Avoid Impropriety and the Appearance of Impropriety in the Judge's Official Activities
>
> A. A Judge should respect and comply with the law, and the judge's conduct at all times should promote public confidence in the integrity and impartiality of the judiciary.

This raises the question that I put before this court. Can the trial courts of Missouri break the Missouri Rules of Court? Does the Supreme Court of Missouri have a duty to uphold it's own rules of court? Are the Rules of Court really the rules, or are they mere props which exist solely for the purpose of creating the illusion of justice?

Appearance of Impropriety

I contend that this decision, to allow defendants to represent other defendants, would not have occurred had I hired a lawyer. I contend that it appears that this judge tried to take advantage of the fact that most pro se litigants don't know what the rules are. I contend that it appears that the higher courts in the state of Missouri are very tolerant of this sort of behavior and that not enough is being done to ensure the rights of the pro se litigant.

The Missouri Courts appear to not be sufficiently committed to the enforcement of ethical standards. From this pro se litigant's point of view, the behavior of the Missouri judiciary can only be described as bizarre beyond belief. This ruling shocks the conscience. I find the idea that a judge would allow defendants to represent other defendants to be incomprehensible. And I find that the inaction of the higher court to prevent the improper actions of the lower court to be disturbing.

I find that a pro se litigant having to tell the justices of the Supreme Court of Missouri that defendants can't represent other defendants to be equivalent to a 5 year old having to tell Einstein that 1 + 1 = 2. I find that the fact that I am even here, in the Supreme Court of the United State, having to make this argument is appalling.

I find the decision of the trial court to allow a lawyer, who is accused of a fraudulent conspiracy with a client, to represent that client at trial has the appearance that the trial judge is assisting the lawyer to help him get away with the fraud. From the perspective of a citizen, it appears to me as if the Missouri courts are merely simulating a justice system.

Failure of this court to act

The trial court has ruled that one defendant can represent another defendant at trial. The Missouri Court of Appeals and the Supreme Court of Missouri have refused to rule on this question of law. By failing to rule they are allowing the improper representation to continue. This court is the court of last resort. If this court fails to rule then this court will effectively be ruling to permit defendants to represent other defendants. In this case a failure of this court to act is logically equivalent to permission to continue. By failing to prevent defendants to represent other defendants, when the court has the duty to do so, is logically the same as deciding to allow the practice.

A decision to allow defendants to represent other defendants is logically equivalent to ruling that 1 + 1 = 3. Such a ruling would introduce chaos into the legal system and undermine the ability of the American Justice System to function.

A defendant representing other defendants directly violates the letter of the Missouri Rules of Court. One of the questions before this court is if a State is allowed to break it's own rules. If this court allows Missouri to break it's own rules, then the Rules become meaningless. And if the Rules become meaningless then justice itself becomes meaningless. This court will have failed in its duty to the constitution and will have usurped the power of a monarchy, allowing judges can do whatever they want in spite of what the law and the Constitution says. For this court to not act and to allow defendants to represent other defendants would be an act of treason by this court against the Constitution of the United States (Cohens v. Virginia, 6 Wheat, 264, 404).

If this court fails to act then this court will be creating a new class of lawsuits which are forever suspended in time due to a judicial stalemate and thus undermine the 14th Amendment with regard to a citizens right to due process of law.

A decision of this court to do nothing would be in direct conflict with the Sixth Circuit case of UNITED STATES v. UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF TENNESSEE where the court ruled that the high courts had a duty to resolve judicial stalemates.

In an environment where judges are allowed to throw out the rules on a whim, what would be the point of even quoting the rules or the constitution? Why have case law? The law is whatever the judge says it is depending on his mood and who he wants to win that day.

I contend that the framers of the Constitution believed that justice was more than a slogan and that the Rules really are the

Rules and that there is an expectation that the courts follow their own rules. I contend that this court has a duty to make sure state courts obey their own rules, and to make it clear that if a judge breaks the rule, that the higher courts of the state have a duty to correct the lower court. Especially when the trial judge has stayed a case waiting for the higher court to rule.

Thus, if this court fails to act it will set very dangerous precedents that will eventually undermine the ability of the judicial system to properly function. Therefore, this court must act.

Motion for Order to Show Cause

I contend that it would be appropriate for this court to order the Respondents to show cause why this writ of mandamus should not issue.

In the judicial stalemate in the Tennessee case cited above the Sixth Circuit Court issued an order to show cause why the writ of mandamus should not be granted, and the judge complied with the order. The order to show cause was necessary in order for that court to make a determination as to how to end the judicial stalemate.

In this case, Judge Syler ordered the court stayed, pending a decision of the higher court on the question of law, as to if a defendant can represent another defendant. Since this judge ordered the question of law to be certified, and the question is now before this court, he should be required to explain to this court his legal theory to support his ruling. If he doesn't explain his decision, how can the higher court make a determination if his decision is valid? I would think that the authority of Judge Syler's own order, that the question of law be certified, would be enough justification to compel him to state his position on the question.

In addition, the three attorneys involved, Mr. Wear, Mr. Sharp, and Mr. Duncan, who contend that it is proper for defendants to represent other defendants should be ordered to show cause why they should be permitted to represent another defendant.

I also contend that Judge Syler's order to certify the question of defendants representing defendants was confusing to the higher courts. It looks to me that both the Missouri Court of Appeals and the Supreme Court of Missouri clearly didn't understand Judge Syler's desire to have the question certified. Perhaps Judge Syler didn't make the order in the proper form for the court to act.

Perhaps it is the high court's confusion over Judge Syler's ruling that is the cause of the judicial stalemate.

Since Judge Syler ruled that the question of defendants representing defendants should be certified, Judge Syler has not filed a Respondent's brief to the higher Missouri Courts explaining his logic that supports his contention that defendants representing defendants is proper. Without hearing Judge Syler's arguments the higher courts of Missouri may have been confused as to what it was that Judge Syler wanted them to do. Therefore, to avoid confusion in this court it would be appropriate for this court to issue an order to Judge Syler to explain to this court, the Supreme Court of Missouri, and the litigants, what his order means.

I don't know what position the Supreme Court of Missouri will take on this but they should be ordered to show cause why a judicial stalemate should be allowed to stand. Perhaps the Supreme Court of Missouri didn't realize the implications of their non-decision and would like to take some action to correct it. Perhaps the Supreme Court of Missouri can explain to this court what Judge Syler's decision means from their perspective.

If we are going to allow a trial judge in Springfield Missouri to introduce into case law a new form of client/lawyer relationship that has never been tried before, that judge should at least be required to explain his reasoning. Because the issue is complex and unusual, this court would not be able to make an informed decision without hearing all party's positions. In the interest of avoiding unnecessary delay, it is necessary to compel the Respondents to show cause in order for this court to reach a decision.

Since the trial judge has suspended all proceedings and has suspended all discovery rights pending a decision of this court, in the interests of expediting this proceeding it would be appropriate for this court to order the Respondents to show cause why the mandamus should not issue.

CONCLUSION

WHEREFORE, Petitioner, Marc Perkel, Respectfully requests this court to:

- Issue an immediate order to the Respondents to show cause why a Writ of Mandamus should not be issued.
- Issue a Writ of Mandamus to order the Supreme Court of Missouri to make a ruling on the question of defendants representing other defendants.
- Or, in the alternative, to make a ruling prohibiting defendants from representing other defendants.
- Make a finding that the high court has a duty to resolve judicial stalemates.
- Make a finding that state courts must obey their own rules.
- Costs should be assessed against the Respondents.
- Grant other relief as this court sees fit.

Marc Perkel, Petitioner, pro se
411 North Sherman #300
Springfield Mo. 65802
417-866-1222
Date: 12-22-97

APPENDIX A - Orders of the Courts

Order of Judge Syler to certify ruling

In the Circuit Court of Greene County, Missouri

Case No: 197CC0170

Marc Perkel, Plaintiff, pro se
vs.
William A. Wear, et. al, Defendants

Honorable William L. Syler
Entered July 14th 1997

Order

The Court takes up Motion #2, Motion to Disqualify Defendant Vicki Stringfellow's Attorney's for Conflict of Interest. After examination of Deft Stringfellow in regard to her representation, the Court denies the motion. Whereupon, Petr requests certification of the ruling. After consideration of requests for certification, the Court recesses all proceedings pending Petr's certification to the Court of Appeals.

Order of Missouri Court of Appeals

Missouri Court of Appeals
Southern District

Case No: 21784-1

Marc Perkel, Relator, pro se
vs.
Honorable William L. Syler, et. al.

Entered July 30th 1997

Order

Now on this 30th day of July 1997, the court takes up relator's petition for writ of prohibition, and the supplement to said petition. Having fully considered the same, the Court denies the writ of prohibition and denies the request for relief made in the supplement to the petition. In denying the petition, the Court notes that a writ of prohibition does not permit interlocutory review of alleged trial court error which is not in excess of the power of the court to act and which can be raised in an appeal following judgement. State ex rel. Morasch v. Kimberlin, 654 S.W. 2d 889, 891-92 (Mo. Banc 1983).

Order of Supreme Court of Missouri

Supreme Court of Missouri

Case No: 80222

Marc Perkel, Relator, pro se

vs.

Honorable William L. Syler, et. al.

Entered September 30th 1997

Order

Now at this day, on consideration of the petition for writ of prohibition or in the alternative mandamus or to certify a question of law herein to the said respondent, it is ordered by the court here that said petition be, and the same is hereby denied.

Judge Syler's second order to stay

In the Circuit Court of Greene County, Missouri

Case No: 197CC0170

Marc Perkel, Plaintiff, pro se
vs.
William A. Wear, et. al, Defendants

Honorable William L. Syler
Entered December 3rd 1997

Order

On this 3rd day of December, 1997 the Court takes up Defendant Vicki Stringfellow's Motion for Protective Order which is hereby granted. All discovery or other motions pending are hereby stayed pending further appellate action by Petitioner Perkel including, but not limited to, any Writ of Certiorari from the U.S. Supreme Court.